



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/161820

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 07, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, a hearing was held on December 09, 2014, at Milwaukee, Wisconsin.

The issues for determination are:

1. Whether the Petitioner's appeal is timely with regard to cost share and, if so, whether the agency properly determined Petitioner's cost share;
2. Whether the agency properly seeks to discontinue the Petitioner from the Family Care program for failure to pay her monthly cost share.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Lillian Alford  
Milw Cty Dept Family Care - MCO  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner currently resides alone at a [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED]). Her primary diagnosis includes a stroke with left-sided hemiparesis. Petitioner's functional limitations include difficulty managing her checkbook due to physical limitations. She does not have any cognitive deficits.
3. On January 7, 2014, the Petitioner applied for Family Care. On February 10, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she was approved for Family Care and that her cost share is \$1843.14/month effective January 1, 2014. The notice also provided appeal rights to the Petitioner informing her that any appeal must be filed with the Division of Hearings and Appeals by March 28, 2014. Petitioner's cost share has not changed since January 1, 2014.
4. Petitioner's room and board has been \$531.67 since January, 2014 with the exception of February and March, 2014 when her room and board was \$384.56/month.
5. Petitioner's payment history is as follows:

Month	Cost Share	Room & Board	Total Charges	Amount Paid
January, 2014	\$1,843.14	\$531.67	\$2,374.81	\$1,335.81
February, 2014	\$1,843.14	\$384.56	\$2,227.70	\$1,335.81
March, 2014	\$1,843.14	\$384.56	\$2,227.70	\$1,843.14
April, 2014	\$1,843.14	\$531.67	\$2,374.81	\$2,300.00
May, 2014	\$1,843.14	\$531.67	\$2,374.81	0
June, 2014	\$1,843.14	\$531.67	\$2,374.81	\$3,445.00
July, 2014	\$1,843.14	\$531.67	\$2,374.81	\$1,843.14
August, 2014	\$1,843.14	\$531.67	\$2,374.81	\$1,900.00
September, 2014	\$1,843.14	\$531.67	\$2,374.81	\$1,900.00
October, 2014	\$1,843.14	\$531.67	\$2,374.81	0
November, 2014	\$1,843.14	\$531.67	\$2,374.81	0

6. On October 29, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her FC benefits would end on December 1, 2014 due to failure to pay the monthly cost share.
7. On November 7, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly "cost share." See Medicaid Eligibility Handbook (MEH), Chapter 29. A recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1b.

### ***1. Timeliness of Appeal***

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action by an agency concerning Medicaid, including Family Care, must be filed within 45 days of the date of the action. Wis. Stats., §49.45(5). In this case, the agency determined the Petitioner's cost share and room and board on February 10, 2014. The deadline for filing an appeal on that determination was March 28, 2014. The petitioner's appeal was filed 269 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the issue of the cost share determination.

### ***2. Termination for Non-Payment***

A person who is required to pay an FCP cost share but fails to make the required payments is ineligible for FCP. Wis. Stat. § 46.286(2)(c) and the Wis. Admin. Code § HFS 10.34(4)(a).

At the hearing, the Petitioner testified that the amount of payments made in Finding of Fact #5, as presented by the agency, appears to be correct. The Petitioner's primary argument is that the cost share is too high. As noted above, I cannot review the merits of the cost share determination because the Petitioner's appeal is not timely as to that issue.

Therefore, based on the evidence and testimony, I conclude that the Petitioner has failed to make the required cost share payments and the agency's determination to end the Petitioner's enrollment effective December 1, 2014 was proper.

I note that the agency indicated to the Petitioner prior to and at the hearing that it was willing to work with her to remain in the program if she would agree to having a representative payee or other designated person take care of making payments to cover the outstanding balance as well as the monthly payments needed to continue in the program.

### **CONCLUSIONS OF LAW**

1. The Petitioner's appeal is untimely with regard to the agency's cost share determination.
2. The agency properly determined that the Petitioner can be disenrolled in the program for failure to pay her monthly cost share.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 27th day of January, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 27, 2015.

Milw Cty Dept Family Care - MCO  
Office of Family Care Expansion